

Interstate Commerce Commission  
Washington, D. C.

RECORDATION NO. .... Filed 1425

FEB 16 1979 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

①  
9-047A022  
FEB 16 1979  
Date  
Fee \$ 50.00  
Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and thirteen counterparts of a Trust Agreement dated as of December 1, 1978.

A general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Trustor: Borg-Warner Leasing Corporation  
Suite 2700  
One IBM Plaza  
Chicago, Illinois 60611

Trustee: First Security State Bank  
79 South Main Street  
Salt Lake City, Utah 84111

The undersigned is the Trustee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and seven copies of the Trust Agreement to Michael G. McGee, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

FIRST SECURITY STATE BANK

By [Signature]  
Its Trust Officer

TRUSTEE AS AFORESAID

Enclosures

RECEIVED  
FEB 16 10 57 AM '79  
FEE OPERATION BR.  
I.C.C.

Counterpart - C.T. Koppeler

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Portec, Inc.

Description and Mark and  
Number of Items of  
Equipment:

Type A: 55 fully enclosed, tri-level auto racks with end doors, which shall bear Railroad's rack identifying numbers BN 4781 through BN 4835, both inclusive.

Type B: 47 fully enclosed, bi-level doors, which shall bear Railroad's rack identifying numbers BN 7025 through BN 7071, both inclusive.

Type C: 200 enclosed tri-level auto racks without end doors, which shall bear Railroad's rack identifying numbers BN 4581 through BN 4781, both inclusive.

Maximum Aggregate Purchase  
Price of Equipment: \$11,756,352

Place of Delivery: Clinton, Illinois or Novi, Michigan

Outside Delivery Date: December 31, 1979

SCHEDULE A

**Interstate Commerce Commission**  
Washington, D.C. 20423

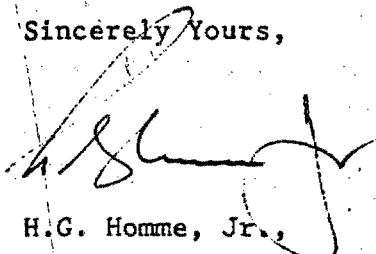
OFFICE OF THE SECRETARY

Michael G. McGee  
Chapman And Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Mr. McGee:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on February 16, 1979 at 11:00 PM , and assigned recordation number(s) 10116, 10117 And 10118

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

FEB 16 1979 - 11 00 PM

INTERSTATE COMMERCE COMMISSION

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## **TRUST AGREEMENT**

**Dated as of December 1, 1978**

*Between*

**FIRST SECURITY STATE BANK**

*Trustee*

*And*

**BORG-WARNER LEASING CORPORATION**

*Trustor*

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## TRUST AGREEMENT

**TRUST AGREEMENT** dated as of December 1, 1978 between First Security State Bank, a Utah banking corporation (the "Trustee") and Borg-Warner Leasing Corporation, a Delaware corporation (the "Trustor");

### RECITALS:

A. Burlington Northern, Inc., a Delaware corporation (the "Lessee") has entered into contractual arrangements for the acquisition of certain railroad equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment"), a description of which is set forth in Schedule A to the Equipment Lease hereinafter referred to.

B. The Lessee desires to lease, rather than purchase the Equipment.

C. The Trustor desires to create this trust ("the Trust" or "this Trust") for the purpose of acquiring the Equipment and leasing the same to the Lessee.

D. The Trustee is willing to accept the duties and obligations imposed hereunder.

NOW, THEREFORE, THE PARTIES HEREBY AGREE as follows:

### SECTION 1. DIRECTIONS TO EXECUTE DOCUMENTS.

The Trustor hereby authorizes and directs the Trustee, solely on behalf of the Trust, to enter into, execute, deliver and perform:

(a) A Participation Agreement dated as of December 1, 1978 (the "Participation Agreement") among the Lessee, the Trustor, the Trustee, Morgan Guaranty Trust Company of New York as Trustee of various pension trusts and as agent for various institutional investors (the "Note Purchaser") and First Security Bank of Utah, N.A. (the "Security Trustee"), providing among other things for the advance by the Trustor to the Trustee on the Closing Dates (as therein defined) of a portion of the Purchase Price (as therein defined) of the Equipment and for the issue and sale by the Trustee and the purchase by the Note Purchaser of the Trustee's Secured Notes (the "Notes");

(b) A Purchase Order Assignment (the "Assignment") with the Lessee substantially in the form of Exhibit A attached to the Participation Agreement providing for the assignment by the Lessee to the Trustee of the rights and obligations (except with respect to excluded Items of Equipment) of the Lessee to purchase the Equipment from Portec, Inc. (the "Manufacturer"), which Assignment shall be consented and agreed to by the Manufacturer;

(c) An Equipment Lease (the "Lease") with the Lessee substantially in the form of Exhibit B attached to the Participation Agreement providing for the lease of the Equipment by the Trustee to the Lessee;

(d) A Security Agreement—Trust Deed (the "Security Agreement") from the Trustee to the Security Trustee, as secured party, substantially in the form attached as Exhibit C to the Participation Agreement providing for the grant of a security interest in the Equipment (subject to the rights of the Lessee under the Lease), the Lease and the rents and other sums due and to become due under the Lease (except as otherwise therein set forth) as security for the Notes;

(e) From time to time the Notes in the manner and subject to the terms and conditions provided in the Participation Agreement and the Security Agreement; and

(f) All such other documents and to do all such things and take all such action as may be necessary or convenient to consummate the transactions and to perform the terms and conditions of this Trust, all as contemplated herein or in the documents referred to herein.

An Indemnity Agreement (the "Indemnity Agreement") will be executed and delivered by the Lessee and the Trustor substantially in the form attached as Exhibit D to the Participation Agreement. This Trust Agreement and the other documents and agreements referred to in this Section 1 (other than the documents referred to in clause (f) above) are hereinafter sometimes referred to as the "Operative Agreements".

## **SECTION 2. DECLARATION OF TRUST.**

The Trustee hereby declares and agrees that it will and does hold all estate, right, title and interest of the Trustee in and to the Equipment and the Operative Agreements, including, without limitation, all funds advanced to the Trustee by the Trustor, all proceeds from the sale of the Notes, all installments of rent, insurance proceeds, casualty values, condemnation awards and sale proceeds, and all other payments of any kind for or with respect to the Equipment and the Operative Agreements (all of the foregoing being herein called the "Trust Estate") upon the trusts hereinafter set forth for the use and benefit of the Trustor, subject to all the terms and conditions of the Participation Agreement and the Security Agreement and the rights of the Note Purchaser thereunder.

## **SECTION 3. LIMITATIONS ON AUTHORITY OF TRUSTEE WITH RESPECT TO THE TRUST ESTATE.**

Except to execute and deliver the Operative Agreements and to exercise and carry out or cause to be exercised and carried out the rights, duties and obligations of the Trustee hereunder and thereunder, the Trustee shall have no power, right, duty or authority to manage, control, possess, sell, lease, dispose of or in any other manner deal in or with the Equipment or any part thereof or interest therein at any time conveyed to or vested in or registered or otherwise standing in the name of the Trustee. Except to receive, collect and distribute and deal with the proceeds of the Lease and with the Equipment and the proceeds thereof as in the Lease and in this Trust Agreement set forth, the Trustee shall have no power, right, duty or authority to deal with any other property at any time constituting part of the Trust Estate. It is understood, however, that subject to the limitations on the power and authority of the Trustee, as Lessor, contained in the Lease, nothing in this Section 3 contained shall be deemed to limit or restrict the power and authority of the Trustee, as Lessor under the Lease, to enforce the terms and provisions of the Lease, to collect and receive rentals and other sums payable thereunder and otherwise to exercise the rights, powers and privileges of the Lessor as provided for by the Lease to the fullest extent permitted by applicable law or to enforce the terms and provisions of the Participation Agreement.

## **SECTION 4. ADVANCE BY TRUSTOR.**

**4.1. Advance by Trustor and Application Thereof.** Subject only to the provisions of and the terms and conditions set forth in the Participation Agreement, on each Closing Date under the Participation Agreement the Trustor hereby agrees to advance funds which are required to discharge the obligation of the Trustor under Sections 2.1 and 2.6 of the Participation Agreement. The amount so advanced by the Trustor on each Closing Date shall, together with the sums provided by the Note Purchaser under the Participation Agreement, be applied to the payment to the Manufacturer of the Purchase Price of the Items of Equipment to be settled for on such Closing Date.

**4.2. Notice; Place of Payment.** On each Closing Date, the Trustor will make the funds required by the preceding Section 4.1 available to the Security Trustee by bank wire transfer of Federal or other immediately available funds at the place of payment set forth in Section 2.3 of the Participation Agreement not later than 11:00A.M., local time at said place of payment.

## **SECTION 5. DISTRIBUTIONS.**

**5.1. Collections and Remittances by Trustee.** The Trustee agrees that, subject to the provisions of this Trust Agreement, it will during the term of this Trust administer the Trust Estate, and take steps to collect all rent and other sums payable to the Trustee by the Lessee under the Lease. The Trustee agrees to distribute to the Trustor all proceeds received from the Trust Estate which under the terms hereof are distributable to the Trustor. The Trustee shall make such distribution from time to time as such proceeds are received by the Trustee and are available for distribution, it being understood and agreed that the Trustee shall not be obligated to make such distribution until the funds for such distribution have been received by the Trustee in cash or its equivalent, provided that such distribution shall be made not later than the first business day following such receipt by wire transfer of immediately available funds to the Trustor.

**5.2. Distributions after Default.** Subject to the terms of Section 6.4 hereof, the proceeds received by the Trustee from the exercise of any remedy under the Lease shall, after the deduction of all expenses and disbursements of or made by the Trustee in connection with the exercise of such remedy, including, without limitation, fees and expenses of the Trustee and its counsel, be distributed to the Trustor. When all of the Trust Estate has been disposed of by the Trustee upon any default and all of the net proceeds thereof have been distributed as aforesaid, then this Trust shall cease and terminate.

**5.3. Effect of Sales by Trustee.** Any sale hereunder of all or any part of the Trust Estate by the Trustee shall bind the Trustor and shall be effected for the benefit of the purchasers and their respective successors and assigns to divest and transfer all right, title and interest vested in the Trustee or the Trustor hereunder in the property so sold and no purchaser shall be required to inquire as to compliance by the Trustee with any of the terms hereof or to see to the application of any purchase money therefor.

**5.4. Effect of Operative Agreements.** All duties, rights, obligations and liabilities of the Trustee provided for in this Section 5 are subject to the terms and conditions of the Operative Agreements and the rights and interests of the other parties to the Operative Agreements under such Agreements.

## **SECTION 6. CERTAIN PROVISIONS RESPECTING TRUSTEE.**

**6.1. Acceptance of Trusts and Duties.** The Trustee accepts the trust hereby created and agrees to perform the same as herein expressed and agrees to receive and disburse all moneys constituting part of the Trust Estate in accordance with the terms hereof.

**6.2. Notice of Events of Default.** In the event the Trustee shall have knowledge of an Event of Default (as defined in the Lease or the Security Agreement) or knowledge of a default under any of the Operative Agreements, the Trustee shall, unless it shall have been notified thereof in writing by the Trustor, give prompt written notice of such Event of Default or default to the Trustor by registered mail, postage prepaid. Subject to the terms of Section 6.3 and the rights of the other parties to the Operative Agreements under such Agreements, the Trustee shall take only such action with respect to such Event of Default or default as shall be specified in written instructions from the Trustor. For all purposes of this Trust Agreement and the Lease, in the absence of actual knowledge



of any officer of the Trustee having any responsibility for the acceptance or administration by the Trustee of corporate trust accounts, the Trustee shall not be deemed to have knowledge of an Event of Default unless notified in writing by the Trustor, the Lessee, the Security Trustee or the Note Purchaser.

**6.3. Action Upon Instructions.** Subject to the terms of Sections 6.2 and 6.4 hereof and the rights of the other parties to the Operative Agreements under such Agreements, the Trustee shall not be required to take, and the Trustee agrees that it will not take, any actions other than those specifically required hereunder; provided that upon the written instructions at any time and from time to time of the Trustor, the Trustee will take such of the following action as may be specified in such instructions:

- (i) give such notice or direction or exercise such right or power under the Lease as shall be specified in such instructions;

- (ii) approve as satisfactory to the Trustee all matters required by the terms of the Lease to be satisfactory to the Trustee; and

- (iii) after the expiration of the term of the Lease, convey all of the Trustee's right, title and interest in and to the Equipment for such amount, on such terms and to such purchaser or purchasers as shall be designated in such instructions, or otherwise dispose of such interests on such terms as shall be designated in such instructions, provided that if instructions for the sale or other disposition of the Equipment have not been delivered to the Trustee prior to the expiration of the term of the Lease, the Trustee shall transfer title to all such interests to the Trustor.

**6.4. Certain Duties and Responsibilities of Trustee.** (a) Except during the continuance of an Event of Default (as defined in the Lease or the Security Agreement):

- (i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth herein and in the Operative Agreements and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee, and the Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Equipment or any other part of the Trust Estate, except as expressly required by the terms of the Operative Agreements and as otherwise provided herein;

- (ii) the Trustee agrees that it will, in its individual capacity and at its own expense, promptly take such action as may be necessary to discharge any liens and encumbrances on the Collateral arising out of claims against the Trustee not related to its ownership of the Equipment;

- (iii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement; and

- (iv) no provision hereof shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability, cost or expense in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk, liability, cost or expense is not reasonably assured to it.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in the Trustee by this Trust Agreement, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision hereof shall be construed to relieve the Trustee of liability for its wilful misconduct or gross negligence, except that:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section 6.4; and

(ii) in the absence of gross negligence or wilful misconduct, the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Trustor pursuant to the express provisions hereof.

(d) Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.4.

**6.5. Certain Rights of Trustee.** Except as otherwise provided in Section 6.4 hereof:

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request, direction or authorization by any corporation shall be sufficiently evidenced by a request, direction or authorization in writing, delivered to the Trustee, and signed in the name of such party by its Chairman of the Board, its President, any Vice President thereof, its Treasurer, its Secretary, or any other authorized officer, and any resolution of the Board of Directors or committee thereof of such party shall be sufficiently evidenced by a copy of such resolution certified by its Secretary or an Assistant Secretary thereof to have been duly adopted and to be in full force and effect on the date of such certification, and delivered to the Trustee.

(c) Whenever in the administration of this Trust Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may rely upon a certificate in writing, delivered to the Trustee and signed by the Chairman of the Board, President, and Vice President or the Treasurer or Secretary or other authorized officer of the Lessee and notice of such need for such proof or establishment shall be delivered to the Trustor, who may advise the Trustee in respect of such matter and the Trustee shall act in conformity with such advice.

(d) The Trustee may exercise its powers and perform its duties by or through such attorneys, agents and servants as it shall appoint; and it shall be entitled to the advice of counsel (who may, in cases deemed by the Trustee in its reasonable discretion to be appropriate, be counsel for the Note Purchaser or the Security Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done in accordance with such advice.

(e) The Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of the Trustor, unless the Trustee shall have been indemnified by the Trustor, in a manner satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action. The Trustee shall not be required to take any action under Section 6.3 hereof, nor shall any other provision of this Agreement be deemed to impose a duty on the Trustee to take any action if the Trustee shall determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms of this Trust Agreement or the Operative Agreements, or is otherwise contrary to law.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Lessee to reasonably determine whether the Lessee is in compliance with the terms and conditions of the Lease and to examine the Equipment, personally or by agent or attorney.

(g) Without limiting the generality of Section 6.4 hereof, the Trustee shall not have any duty (i) to see to any recording or filing of any of the Operative Agreements or of this Trust Agreement or to see to the maintenance of any such recording or filing, (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, whether or not the Lessee shall be in default with respect thereto, (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien owing with respect to, assessed or levied against any part of the Trust Estate except as provided in Section 2.2 of the Security Agreement, (iv) to confirm or verify any financial statements of the Lessee, or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants or agreements under the Lease or the Participation Agreement.

**6.6. Disclaimer of Representations and Warranties.** THE TRUSTEE DOES NOT MAKE (I) ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION OR FITNESS FOR USE OF THE EQUIPMENT OR AS TO ITS TITLE THERETO OR INTEREST THEREIN, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT WHATSOEVER, OR (II) ANY REPRESENTATION OR WARRANTY AS TO THE VALIDITY, LEGALITY OR ENFORCEABILITY OF THIS TRUST AGREEMENT OR THE OPERATIVE AGREEMENTS OR AS TO THE CORRECTNESS OF ANY STATEMENT CONTAINED IN ANY THEREOF, EXCEPT THAT THE TRUSTEE REPRESENTS AND WARRANTS IN ITS INDIVIDUAL CAPACITY THAT IT HAS FULL RIGHT, POWER AND AUTHORITY TO ENTER INTO AND PERFORM THIS TRUST AGREEMENT AS TRUSTEE HEREUNDER AND HAS FULL RIGHT, POWER AND AUTHORITY UNDER THIS TRUST AGREEMENT TO EXECUTE AND PERFORM THE OPERATIVE AGREEMENTS AS TRUSTEE HEREUNDER, AND THAT EACH ITEM OF EQUIPMENT FROM AND AFTER THE DELIVERY DATE THEREOF SHALL BE AND REMAIN FREE OF LIENS AND ENCUMBRANCES RESULTING FROM CLAIMS AGAINST THE TRUSTEE NOT RELATED TO THE OWNERSHIP OF SUCH ITEM OR THE ADMINISTRATION OF THE TRUST ESTATE OR ANY OTHER TRANSACTION PURSUANT TO THIS TRUST AGREEMENT.

**6.7. Status of Moneys Received.** All moneys received by the Trustee under or pursuant to any provision of this Trust Agreement shall constitute trust funds for the purpose for which they were paid or are held, but need not be segregated in any manner from any other moneys and may be deposited by the Trustee under such conditions as may be prescribed or permitted by law for trust funds, or may be invested in direct obligations of the United States of America.

**6.8. Self-Dealing.** The Trustee or any corporation in or with which the Trustee may be interested or affiliated or any officer or director of the Trustee or any such corporation may also have commercial relations and otherwise deal with the Lessee or with any other corporation having relations with the Lessee to the full extent permitted by law.

**6.9. Resignation or Removal of Trustee.** The Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Trustor and the Security Trustee, such resignation to be effective on the date specified in such notice. In addition, the Trustor may at any time remove the Trustee without cause by an instrument in writing, delivered to the Trustee and the Security Trustee. Upon resignation or removal of the Trustee, the Trustor may, with prior written consent of the Security Trustee, appoint a successor trustee by an instrument signed by the Trustor; provided, however, that no such consent shall be required if such successor Trustee is a bank or trust company organized under the laws of the United States of America or any state thereof and having its principal office in the United States of America and having a combined capital and

surplus of not less than \$50,000,000. If a successor trustee shall not have been appointed as provided above within 30 days after such resignation or removal, the Trustor, the Note Purchaser or the Security Trustee may apply to any court of competent jurisdiction to appoint a successor trustee to act until such time, if any, as a successor trustee shall have been appointed as provided above. Any successor trustee so appointed by such court shall immediately and without further act be superseded by any successor trustee appointed as provided above.

**6.10. Estate and Rights of Successor Trustee.** Any successor trustee shall execute and deliver to the predecessor trustee an instrument accepting such appointment, and thereupon each successor trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor trustee in the trusts hereunder with like effect as if originally named as trustee herein, but nevertheless upon the written request of such successor trustee, such predecessor trustee shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor trustee, and such predecessor trustee shall duly assign, transfer, deliver and pay over to such successor trustee any property or moneys then held by such predecessor trustee upon the trusts herein expressed. Upon any such transfer by a predecessor trustee, such predecessor trustee shall provide to the successor trustee and the Trustor an accounting of the Trust Estate and the trusts hereunder.

**6.11. Merger or Consolidation of Trustee.** Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the business of the Trustee may be transferred, shall be the Trustee under this Trust Agreement without further act.

## **SECTION 7. TERMINATION OF TRUST.**

**7.1. Termination.** The Trust created and provided for hereby shall cease and be terminated in any one of the following events, whichever shall first occur:

(a) If the Trustor shall by notice in writing to the Trustee and the Security Trustee revoke and terminate the Trust on and as of a date stated in such notice, which date shall not be less than ten nor more than thirty days from the date of mailing such notice, then on the date specified in such notice the Trust created and provided for hereby shall cease and terminate; on such date the Trustee shall, subject to the provisions of the Operative Agreements, transfer to the Trustor all of the Trustee's right, title and interest in and to the Trust Estate on an "as-is", "where-is" basis without any express or implied representations or warranties whatsoever except that the Trust Estate shall be free of liens resulting from claims against the Trustee not related to its ownership thereof and the Trustor shall, to the extent of the Trust Estate but to no greater extent, assume and discharge all of the duties, obligations and liabilities of the Trustee with respect to the Trust Estate, including, without limitation, the duties, obligations and liabilities of the Trustee under the Lease, the Notes, the Participation Agreement and the Security Agreement (as such duties, obligations and liabilities are limited in said instruments); or

(b) The sale or other final disposition by the Trustee of all property constituting the Trust Estate and the final disposition by the Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms hereof.

**7.2. Distribution of Trust Estate Upon Termination.** Upon any termination of this Trust pursuant to the provisions of Section 7.1 hereof, the Trustee shall convey the Trust Estate to such purchaser or purchasers and for such amount and on such terms as shall be specified in written instructions from the Trustor delivered to the Trustee prior to the date of termination; provided that (i) if at the time of any termination the Lease remains in force and effect, then the Trust Estate shall

be sold as a unit and not in parcels and subject to the Lease, and (ii) in the event such written instructions are not delivered to the Trustee on or before the date of termination, the Trustee shall transfer title to the Trust Estate to the Trustor. Upon making such transfer or sale and accounting for all funds which have come into its hands, the Trustee shall be entitled to immediate receipt of any sums due and owing to the Trustee for expenses incurred pursuant hereto or as a compensation for services rendered hereunder and not theretofore paid and the Trustee shall be discharged and free of any further liability hereunder.

## **SECTION 8. MISCELLANEOUS.**

**8.1. Compensation and Indemnification.** To the extent not otherwise received, the Trustee shall be entitled to receive from the Trustor reasonable compensation for its services, and to be reimbursed for its reasonable expenses hereunder and under the Operative Agreements. The Trustor agrees to reimburse the Trustee and save the Trustee harmless against any and all loss, damage, liability, claims, demands, disbursements and expenses, including without limitation, taxes and counsel fees, which may be incurred by reason of the Trustee being trustee or acting hereunder or under the Operative Agreements, but solely by reason thereof and arising out of or relating solely to this Trust Agreement or the Operative Agreements or the Equipment or the rents and other sums payable under the Lease, or by reason of any occurrence while so acting and to secure the payment thereof the Trustee shall have a lien on the Trust Estate and the proceeds thereof, including income, prior to any interest therein of the Trustor (but subject and subordinate to the lien and security interest created by the Security Agreement in favor of the Security Trustee as secured party and its successors and assigns); provided that the Trustor shall not be so obligated in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including taxes and counsel fees, arising from or as a result of the wilful misconduct or gross negligence of the Trustee. The provisions of this Section 8.1 (other than the requirement for compensation of the Trustee which shall terminate upon the resignation or removal of the Trustee) shall continue in full force and effect notwithstanding the termination of this Trust or the resignation or removal of the Trustee and shall be effective whether or not any of the transactions contemplated hereby are consummated.

**8.2. Amendments.** This Trust Agreement may, from time to time and at any time, be amended or supplemented by an instrument or instruments in writing executed by the Trustee and the Trustor, subject to the prior written consent of the holder of 66⅔% of the aggregate principal amount of the Notes then outstanding.

**8.3. Restriction on Transfer.** The transfer by the Trustor of its interests under this Trust and in and to the Trust Estate shall be governed and restricted by the provisions of and the terms and conditions set forth in the Participation Agreement.

**8.4. Notices.** Any notices and communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or otherwise actually received or five business days after being deposited in the United States mail, registered, postage prepaid, addressed as follows:

If to the Trustee:	First Security State Bank 79 South Main Street Salt Lake City, Utah 84111 Attention: Trust Division, Corporate Trust Department
If to the Trustor:	Borg-Warner Leasing Corporation Suite 2700, One IBM Plaza Chicago, Illinois 60611 Attention: Manager, Leveraged Leasing

If to the Security Trustee: First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Trust Division, Corporate Trust Department

or as to any of the foregoing parties at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

**8.5. Situs of Trust; Applicable Law; Severability.** This Trust has been accepted by the Trustee and will be administered in the State of Utah, and the validity, construction and all rights under this Trust shall be governed by the laws of that State. If any provision of this Trust be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligation or liabilities of the Trustee.

**8.6. Successors and Assigns.** This Trust Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns, including any successive holder of any beneficial interest hereunder, but only to the extent such beneficial interest has been transferred or assigned in accordance with the limitations of the Participation Agreement.

**8.7. Headings and Table of Contents.** The headings of the various Sections of this Trust Agreement and the Table of Contents are inserted for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

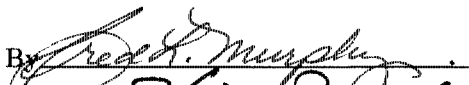
**8.8. Tax Reports.** It is contemplated that certain tax reports and returns are to be prepared and filed by the Lessee pursuant to Section 10.2 of the Lease. In the event any tax report or tax return is required to be made by the Trustee with respect to the Trust Estate and the Lessee is not required to prepare and file the same pursuant to the Lease, the Trustee will prepare such tax report or return.

**8.9. Identification of Trust.** This Trust may for convenience be referred to as "Burlington Northern Trust No. 78-6".

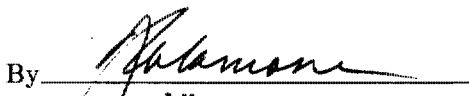
**8.10. Counterparts.** This instrument may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

IN WITNESS WHEREOF, the Trustor and the Trustee have caused this instrument to be duly executed all as of the day and year first above written.

FIRST SECURITY STATE BANK

By   
Its Vice President  
TRUSTEE

BORG-WARNER LEASING CORPORATION

By   
Its Vice President  
TRUSTOR

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss

On this 6 day of Feb, 1979, before me personally appeared FRED L. MURPHY, to me personally known, who being by me duly sworn, says that he is the Vice President of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Theresa L. Bell*

Notary Public

[NOTARIAL SEAL]

My Commission Expires November 15, 1981

My commission expires:

STATE OF ILLINOIS }  
COUNTY OF COOK } ss

On this 12 day of Feb, 1979, before me personally appeared R. S. SALAMONE, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT, of BORG-WARNER LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Sharon K. Bell*

Notary Public

[NOTARIAL SEAL]

My commission expires: 11/29/81